Supreme Court, U.S.
FILED
SEP 15 1997
CLERK

No. 97-295

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

NANCY M. SMITH and
JOSEPH L. SMITH, Her Husband,

Petitioners,

v.

THE HARTFORD INSURANCE GROUP,
THE PROVIDENT LIFE AND ACCIDENT INSURANCE GROUP; NATIONAL MEDICAL ENTERPRISES, INC.; NATIONAL MEDICAL SPECIALTY HOSPITAL GROUP; PSYCHIATRIC INSTITUTES OF AMERICA HEALTH CARE GROUP;
PENNSYLVANIA HEALTH CORP.,
d/b/a The Rehab Hospital in Mechanicsburg;
P.I.A. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATE GROUP INSURANCE PLAN;
P.I.A. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION ADMINISTRATIVE COMMITTEE,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT PENNSYLVANIA HEALTH CORPORATION'S BRIEF IN OPPOSITION

[Counsel listed inside front cover]

September 15, 1997

Washington, D.C. • THIEL PRESS • (202) 328-3286

ANDREW H. CLINE
(Counsel of Record)

H. WOODRUFF TURNER
DAVID R. FINE
KIRKPATRICK & LOCKHART LLP
240 North Third Street
Harrisburg, Pennsylvania 17101
(717) 231-4500
Attorneys for Respondent.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Should this Court grant certiorari to consider Petitioners' "vested rights" theory where they did not properly raise the issue before the lower courts and where the issue has been universally resolved by this Court and the lower federal courts against Petitioners?

2. Should this Court grant certiorari to consider whether attorney's fee awards are limited to a "prevailing party" under the Employee Retirement Income Security Act of 1974 where there is no indication in the record that the lower courts relied on the "prevailing party" issue in reaching their determinations and where Petitioners did not file a fee petition in the district court?

PARTIES TO THE PROCEEDING

The parties to this appeal include Nancy M. Smith and Joseph L. Smith (petitioners) and Pennsylvania Health Corporation (respondent). On May 24, 1995, Pennsylvania Health Corporation was merged into NME Rehabilitation Properties, Inc. Tenet Healthcare Corporation is the parent of NME Rehabilitation Properties, Inc.

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OPINIONS BELOW

Respondent concurs in the statement of opinions below offered in the petition.

JURISDICTION

Respondent does not object to the statement of jurisdiction in the petition.

STATUTES OR OTHER PROVISIONS INVOLVED

This case involves relevant portions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

STATEMENT OF THE CASE

A. Facts

Because Petitioners have challenged the lower courts' legal conclusions rather than the district court's factual findings, Respondent will draw its description of the facts from the district court's findings of fact, with particular emphasis on those facts relevant to the legal issues raised in the petition. *See* Findings of Fact and Conclusions of Law dated April 26, 1996 (attached to the petition at Appendix 7a-28a); Memorandum and Order dated February 16, 1995 (attached to the petition at Appendix 56a-75a).

On August 27, 1985, Nancy Smith suffered a cerebral hemorrhage and required nursing care thereafter. At the time, she was employed as a nurse's aide at The Rehab Hospital in Mechanicsburg, Pennsylvania (the "Rehab Hospital"), a facility owned by Respondent. On the date of her hemorrhage, Mrs. Smith was a participant in the Rehab Hospital's group health care policy with Capital Blue Cross and Pennsylvania Blue Shield. That policy included an unlimited number of days of skilled nursing case and a lifetime maximum benefit of $1 million.

More than a year after Mrs. Smith's illness began, the Rehab Hospital adopted a self-funded employee benefit plan that became known as the VEBA plan. At the time of the change, the Rehab Hospital's employees were told that the group Blue

Cross/Blue Shield plan would be terminated and that they had a week to decide whether to enroll in the VEBA plan or to seek alternative coverage.

The district court found that an employee of the Rehab Hospital made certain misstatements to Joseph Smith, Mrs. Smith's husband, regarding the coverage available to Mrs. Smith under the VEBA plan and, in reliance on those misstatements, the Smiths elected to enroll in the VEBA plan. The district court further found that, had they known the true extent of the coverage available to Mrs. Smith under the VEBA plan, the Smiths would have exercised their right to convert to a direct-pay individual Blue Cross/Blue Shield policy rather than to enroll in the VEBA plan. (The individual plan to which they could have converted had a lifetime maximum benefit of $250,000.00).

The VEBA plan paid for Mrs. Smith's nursing care from December 6, 1986, until April 7, 1998, despite the fact that she had been placed on a leave of absence from the Rehab Hospital on November 27, 1985. On June 30, 1988, Mrs. Smith became eligible for Medicare and that program became her primary payor.

B. Procedural History

For purposes of this brief, Respondent incorporates the statement of procedural history in the decision of the Third Circuit in *Smith I.*

Accordingly, this recitation focuses on procedural matters that occurred after the court of appeals (in *Smith I)* remanded the case to the district court and it focuses on those matters particularly relevant to the instant petition.

In its remand instructions, the court of appeals directed the district court to consider two primary issues: when Nancy Smith left "the employ" of the Rehab Hospital and whether the Hospital's change to the self-insured VEBA Plan constituted group coverage by "another organization" or "another insurer." 6 F.3d at 142. The parties agreed that the district court could resolve these two issues based upon the documentary record in the case and without the need for a hearing. At the same time, Respondent filed a motion for summary judgment based upon this Court's decision in *Mertens v. Hewitt Assoc.*, 508 U.S. 248 (1993). The district court disposed of the two remand issues and the motion for summary judgment with two orders entered on February 16, 1995. In the first decision, the district court answered the two remand questions posed by the court of appeals in a manner favorable to Petitioners.

In the second decision, the district court denied Respondent's motion for summary judgment. After further consultation with the parties, the district court issued an order on September 5, 1995, and addressed the scope of the remedy potentially available to Mrs. Smith. In its accompanying memorandum, the district court *sua*

sponte considered the issue of an award of attorney's fees under ERISA Section 532(g). Notably, Petitioners had not filed a fee petition and the district court had not afforded either party an opportunity to be heard on the issue. (As noted below, Petitioners never filed a fee petition.)

The district court held a remedy trial on January 17, 1996, and rendered its findings of fact and conclusions of law on April 26, 1996. Effectively, the district court determined that, in actuality, Mrs. Smith had received all of the benefits she would have received had she exercised the conversion option and that, therefore, she was due no additional recovery. Accordingly, the district court entered judgment in favor of Respondent.

Petitioners appealed to the Third Circuit and, on March 28, 1997, the court of appeals affirmed the district court with a judgment order. Petitioners sought a rehearing by the court of appeals sitting *en banc,* and that request was denied by order of May 14, 1997.

On August 11, 1997, Petitioners filed in this Court their petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

Broadly speaking, the petition should be denied because Petitioners failed to properly raise and preserve in the courts below the issues they seek to present to this Court.

I. The "vesting" issue is not properly before this Court because Petitioners waived the issue in the lower courts.

Petitioners raise as their first issue for this Court's consideration an argument that Mrs. Smith's right to group coverage vested when she suffered her illness. They contend that the lower courts' determinations run afoul of the Contracts Clause of the United States Constitution, relying in part on dictum in the dissent of the late Judge William Hutchinson of the U.S. Court of Appeals for the Third Circuit in *Smith I*. *See Smith v. Hartford Ins. Group*, 6 F.3d 131, 142 (3d Cir. 1993) (Hutchinson, J., dissenting).[1]

It is a well-established rule that this Court will consider only issues properly raised and

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[1] Notably, Judge Hutchinson dissented because he would have affirmed entirely the district court's grant of summary judgment against the Smiths. The passage of his dissent quoted by Petitioners was wholly dictum.

preserved below. *California v. Taylor,* 353 U.S. 553, 556 n.2 (1957). Petitioners did not properly raise and did not properly preserve the "vested rights" theory in this case.

Petitioners include only a portion of Judge Hutchinson's dissent. While Judge Hutchinson discussed the issue of whether Mrs. Smith's rights could be deemed to have vested, he also noted that

> Unfortunately, I think we are unable to reach or consider that issue in this case. Mrs. Smith did not raise the question whether benefits could be terminated after she became disabled until her motion for reconsideration of the district court's order granting summary judgment.

6 F.3d at 147 (Hutchinson, J., dissenting). As Judge Hutchinson correctly noted, the "vested rights" issue was never properly before the district court (having been raised in the first instance in a motion for reconsideration) and never properly before the court of appeals in *Smith I.*

In addition, despite Petitioners' suggestion to the contrary, the "vested rights" issue was not before the district after the remand in *Smith I.* In its decision in *Smith I,* the Third Circuit gave express directions to the district court regarding what that court was to consider on remand:

> To summarize, there are two principle questions on remand: when Nancy Smith left "the employ" of the Hospital and whether the Hospital's change to the self-insured VEBA Plan constituted group coverage by "another organization" or "another insurer."

6 F.3d at 142. Thus, the district court never had occasion to pass on the "vested rights" theory and, accordingly, that issue was never properly presented to the Third Circuit and has not been preserved for this Court's review.

II. The "vested rights" issue is not a proper one for review in this Court because there is no split of authority in the circuit courts and there is recent authority from this Court that is in accord with the decisions of the court of appeals and the district court in this case.

This Court's consideration of a petition for a writ of certiorari such as that presented by Petitioners is guided by a number of criteria: whether there is a split of authority in the lower federal courts, whether the court of appeals has decided an important federal question in a way that conflicts with a decision by a state court of last resort, whether a lower federal court has so far departed from the accepted and usual course of

judicial proceedings or whether the petition presents an important question of federal law that has not been, but should be, settled by this Court. Supreme Court Rule 10.

In this case, neither of the two issues Petitioners have put before this Court meets these criteria.

A. All of the circuit courts that have considered the issue of whether ERISA welfare benefits automatically vest have held that they do not.

Petitioners suggest to this Court that the circuit courts are divided on the issue of whether ERISA welfare benefits can vest.

This misstates the issue. The federal courts (including this Court) have universally held that ERISA welfare benefit do not "automatically" vest. *See Inter-Modal Rail Employees Assoc. v. Atchison, Topeka & Santa Fe Railway Company,* 117 S.Ct. 1513, ___ (1997); *In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation,* 58 F.3d 896, 901-02 (3d Cir. 1995) (welfare benefits do not automatically vest and they do so only when the plan documents indicate an express intention that benefits will be permanent); *Wheeler v. Dynamic Engineering, Inc.,* 62 F.3d 634 (4th Cir. 1995) ("Welfare benefits plans, including health care plans, are exempt from the statutory vesting requirements that ERISA

imposes on pension benefits . . . . However, benefits under a welfare benefit plan may vest under the terms of the plan itself."); *Wulf v. Quantum Chemical Corp.*, 26 F.3d 1368 (6th Cir. 1994) (same).

B. Because Petitioners did not present evidence in the district court that the plan in question created a vested right to benefits, the only question they can raise before this Court is whether ERISA welfare benefits automatically vest, and that question has been universally answered in the negative.

In the instant case, Petitioners offered no evidence to the district court to suggest that the plan documents created any "vested" rights. *See* Memorandum and Order of the District Court of September 5, 1995 (included in the appendix to the petition at 41a) ("Plaintiffs have pointed to nothing in Defendant's former [Blue Cross/Blue Shield] group plan to suggest that vested medical benefits were promised or otherwise intended by Defendant.").[2] Petitioners did not argue to the Third Circuit and they do not argue to this Court

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[2] The only "vested rights" that Petitioners enjoyed under the Blue Cross/Blue Shield group plan was the option to convert to an individual policy upon termination of their group coverage.

that the district court's characterization of the evidence was incorrect. Accordingly, Petitioners cannot now argue that the plan at issue created some vested right to benefits; rather, they must argue that ERISA welfare benefits can somehow automatically vest. There is no split of authority on that question – ERISA welfare benefits do not automatically vest.

Petitioners do not present a proper issue to command this Court's limited resources. They did not raise or preserve the "vested rights" theory in the lower courts. Even if they had preserved the issue, the only theory that could conceivably be availing for Petitioners is that ERISA welfare benefits automatically vest, and that theory has been roundly rejected by this Court and the courts of appeals.

Respondent respectfully requests that this Court deny the petition for a writ of certiorari as it regards the "vested rights" theory.

III. The issue of attorney's fees presented in the petition is not a proper issue for this Court's review because Petitioners did not properly present it to the district court and, thus, it was not preserved for review by the court of appeals or this Court.

Petitioners argue that the Court should grant certiorari to consider whether the district court erred in denying them attorney's fees under Section 502(g) of ERISA. Petitioners have failed to present a proper issue for this Court's review.

Petitioners argue that there is division among the federal circuits regarding whether district courts may award attorney's fees in ERISA cases only to prevailing parties. Assuming, *arguendo,* that there is such a split, Petitioners do not present the Court with a proper case by which to resolve the disparity.

Petitioners assert that the district court and, subsequently, the court of appeals denied them an award of attorney's fees because they were not the prevailing party. The problem with this assertion is that there is absolutely nothing in the record to support it.

Petitioners note that, in its memorandum and order of September 5, 1997, the district court discussed the factors described in *Ursic v. Bethlehem Mines,* 719 F.2d 670 (3d Cir. 1983),

governing awards of attorney's fees under ERISA in the Third Circuit. While this is true, it ignores the fact that the district court entered into its discussion *sua sponte*, there being no petition for fees filed by Petitioners. *See* District Court Docket (Appendix at 1a). Further, the district court acted prematurely because the proceedings were not completed and because the district court entered into its fact-specific analysis without affording either party notice and an opportunity to be heard. Accordingly, the district court's discussion of the fee issue can only properly be regarded as a superfluous.

Moreover, as the district court docket indicates, Petitioners ***never*** filed a fee petition in the district court.[3] Thus, the attorney's fee issue was never properly before either the district court or the court of appeals and the issue was not preserved for this Court's review. *See* Fed. R. Civ. P. 54(d)(2)(B).

Petitioners make much of the fact that, in its final order, the district court declined to award attorney's fees because such fees were not covered by the individual Blue Cross/Blue Shield policy. They are mistaken, however, in arguing that the district court's determination suggests that the

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[3] Admittedly, Petitioners filed an affidavit describing what they claimed to be their fees, but they never filed a petition actually seeking those fees and setting forth facts or argument in support of their entitlement to a fee award.

district court applied an incorrect standard. In its introduction to the findings of fact and conclusions of law, the district court specifically noted that the purpose of the remedy trial was to determine the extent of coverage to which Mrs. Smith would have been entitled had she chosen the conversion option. *See* Appendix to the Petition at 8a—9a. At the remedy hearing, Petitioners submitted an affidavit of attorney's fees with their damage evidence. Thus, given the expressed purpose of the hearing and the scope of the findings of fact and conclusions of law, it was entirely appropriate for the district court to conclude that attorney's fees were not a covered expense under the plan. The ERISA fee-shifting provision raises a wholly distinct issue and it was never properly before the district court because Petitioners never filed a fee petition.

Put another way, Petitioners seek this Court's review of the fee issue despite the fact that they never filed a fee petition, the district court never properly considered the issue, and the court of appeals issued only a judgment order. Perhaps more to the point, Petitioners stake their request to this Court on their contention that there is a split of authority on the issue of whether a party must be a "prevailing party" to recover fees under ERISA § 502(g) and, yet, there is nothing in the record of the district court or of the court of appeals to suggest that the "prevailing party" issue was considered or that it was dispositive in the eyes of the lower courts. This Court has consistently denied certiorari where the record of the case does not squarely present the issue that is urged in the

petition. *See, e.g., Oliphant v. Brotherhood of Locomotive Firemen & Enginemen,* 359 U.S. 935 (1959) ("In view of the abstract context in which the questions sought to be raised are presented by this record, the petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit is denied."); *Kimbrough v. United States.* 364 U.S. 661 (1961) (writ dismissed as improvidently granted where question presented in petition "is not presented with sufficient clarity in this case."); *Mitchell v. Oregon Frozen Foods,* 361 U.S. 231 (1960) ("In view of the ambiguities in the record as to the issues sought to be tendered, . . . the writ of certiorari is dismissed as improvidently granted.").[4] Assuming, *arguendo,* that there is a true split of authority on the "prevailing party" issue, this case will not present the Court with a proper opportunity to settle the question.

For these reasons, Respondent respectfully requests that the Court deny the petition for a writ of certiorari with regard to the fee issue.

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[4] Petitioners urge this Court to grant certiorari because they believe "[t]he Third Circuit abdicated its responsibility to correct the District Court's errors." As the Chief Justice has written, "This Court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review." *Ross v. Moffitt,* 417 U.S. 600, 616-617 (1974).

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

KIRKPATRICK & LOCKHART LLP
ANDREW H. CLINE
(counsel of record)

H. WOODRUFF TURNER
DAVID R. FINE

240 North Third Street
Harrisburg, Pennsylvania 17101
(717) 231-4500

Attorneys for Respondent

September 15, 1997

APPENDIX

U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
(HARRISBURG)

CIVIL DOCKET FOR CASE #: 90-CV-1541

Filed: 08/21/90

Smith, et al. v. Hartford Insurance, et al

Assigned to: Judge Sylvia H. Rambo
Referred to: Magistrate J. Andrew Smyser

Jury demand: Plaintiff
Demand: $0,000
Nature of Suit: 890
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in Common Pleas Cumb.: is 2612 Civil 1990

Cause: 28:1132 E.R.I.S.A.

NANCY M. SMITH plaintiff	Richard C. Angino [COR LD NTC] 4503 N. Front Street Harrisburg, PA 17110 717-238-6791 David S. Wisneski [COR LD NTC] Angino & Rovner 4503 N. Front St. Harrisburg, Pa 17110 717-238-6791
JOSEPH L. SMITH, her husband plaintiff	Richard C. Angino (See above) [COR LD NTC]

David S. Wisneski
(See above)
[COR LD NTC]

v.

HARTFORD INSURANCE GROUP, THE
defendant
[term 12/12/91]

Alan R. Boynton, Jr.
[term 12/12/91]
[COR LD NTC]
McNees, Wallace & Nurick
100 Pine St.
P.O. Box 1166
Harrisburg, PA 17108
717-232-8000

G. Thomas Miller
[term 12/12/91]
[COR LD NTC]
P.O. Box 709
105 Locust St.
Harrisburg, PA 17108-0709
717-232-0750

THE PROVIDENT LIFE AND ACCIDENT GROUP
defendant
[term 12/12/91]

Charles W. Rubendall, II
[term 12/12/91]
[COR LD NTC]
Keefer, Wood, Allan and Rahal
210 Walnut St.
P.O. Box 11963
Harrisburg, PA 17108-1963
717-255-8010

Donald M. Lewis, III
[term 12/12/91]
[COR LD NTC]

KEFFER, WOOD, ALLEN
& RAHAL
210 Walnut Street
P.O. Box 11963
Harrisburg, PA 17108-1963
717-255-8038

==========

NATIONAL MEDICAL ENTERPRISES, INC. defendant [term 02/28/91]	H. Woodruff Turner [term 01/28/91] [COR LD NTC] Kirkpatrick & Lockhart 1500 Oliver Building Pittsburgh, PA 15222 412-355-6500 Andrew H. Cline [term 02/28/91] [COR LD NTC] Kirkpatrick & Lockhart 240 N. 3rd St. Harrisburg, PA 17101-1503 717-231-4500
NATIONAL MEDICAL SPECIALTY HOSPITAL GROUP defendant [term 04/16/92]	H. Woodruff Turner [term 04/16/92] (See above) [COR LD NTC] Andrew H. Cline [term 04/16/92] (See above) [COR LD NTC]
PSYCHIATRIC INSTITUTES OF AMERICA HEALTH CARE GROUP defendant	H. Woodruff Turner [term 04/16/92] (See above) [COR LD NTC]

[term 04/16/92]

Andrew H. Cline
[term 04/16/92]
(See above)
[COR LD NTC]

PENNSYLVANIA HEALTH CORP.
dba
Rehab Hospital in Mechanicsburg, The
defendant

Linda J. Shorey
[COR LD NTC]
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101
717-231-4500

H. Woodruff Turner
(See above)
[COR LD NTC]

Andrew H. Cline
(See above)
[COR LD NTC]

==========

P.I.A. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION GROUP INSURANCE PLAN
defendant

P.I.A. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION ADMINISTRATIVE COMMITTEE
defendant

NANCY M. SMITH; JOSEPH L. SMITH, her husband
plaintiff

v.

HARTFORD INSURANCE GROUP, THE; THE PROVIDENT LIFE AND ACCIDENT INSURANCE GROUP
defendant

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NATIONAL MEDICAL ENTERPRISES, INC.; NATIONAL MEDICAL SPECIALTY HOSPITAL GROUP; PSYCHIATRIC INSTITUTES OF AMERICA HEALTH CARE GROUP; PENNSYLVANIA HEALTH CORP., Doing business as Rehab Hospital in Mechanicsburg, The
defendant

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P.I.A. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION GROUP INSURANCE PLAN; P.I.A. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION ADMINISTRATIVE COMMITTEE
defendant

8/21/90	1	PETITION FOR REHOVAL from Common Pleas Cumberland County Court, Case Number: 2612 Civil 1990. N/C from to pltf's counsel and copy of Notice form to deft's counsel. Copy of docket sheet to J. Rambo and T. Millar. Jury trial demanded. Receipt #: 106884 Amt: 120.00 (gg) [Entry date 08/22/90]
8/21/90	2	JOINDER by defendant Provident Life and Accident Insurance Group joins in the

		notice of removal to this Ct. of the Complt. filed against defts. in Court of Common Pleas-Cumberland Cty. with aff. of Donald Lewis attached and C of S. (gg) [Entry date 08/22/90]
8/28/90	3	MOTION by defendant Provident Life and to dismiss, to strike & C of S. (gg)
8/28/90	4	MOTION by defendant Hartford Insurance to dismiss the complt. pursuant to Fed. R. Civ. P. 12(B) (6). & C of S. (gg)
8/29/90	5	CERTIFICATE OF NONCONCURRENCE - filed by Atty. Lewis o/b/o deft, The Provident Life & Accident Insurance Company that pltf's counsel does not concur with deft's mtn to dismiss and mtn to strike dated 8/26/90 and c of s. (jh) [Entry date 09/07/90]
9/11/90	6	BRIEF by defendant Hartford Insurance. in support of motion to dismiss the complt. pursuant to Fed. R. Civ. P. 12(B)(6). [4-1] & C of S. (gg) [Entry date 09/13/90]
9/12/90	7	BRIEF by defendant Provident Life and in support of motion to strike & C of S. [3-2] (gg) [Entry date 09/13/90]
9/12/90	—	PROPOSED ORDER - re: deft. Provident's mtn. to dismiss (gg)
9/25/90	8	MOTION - by Nancy M. Smith and Joseph L. Smith to amend complaint w/Amended Comp and c/s. KJM (gg) [Entry date 09/26/90] [Edit date 09/26/90]
9/25/90	—	PROPOSED ORDER - by plaintiffs RE: Motion to Amend Comp. (gg) [Entry date 09/26/90]

9/25/90 9 BRIEF- by Nancy M. Smith and Joseph L. Smith in support of motion to amend comp. [8-1], response to defts' motion to dismiss the complt. pursuant to Fed. R. Civ. P. 12(B)(6). [4-1], motion of defts. to dismiss [3-1] and in opposition to Provident's motion to strike [3-2] w/exhibits and c/s. (gg) [Entry date 09/26/90] [Edit date 09/26/90]

10/4/90 10 REPLY BRIEF - by defendant Provident Life & Accident Ins. Co. and in support of motion to dismiss [3-1] (pltf. should be granted leave only to assert their claims under Sec. 1132(a)(1)(B)) & motion to strike [3-2] (all state insurance statutes). (c/s) (am) [Entry date 10/09/90]

11/21/90 11 LETTER - to court from Donald M. Lewis, III, Esquire re: letter from Mr. Angino regarding pltfs' effort to state a claim under PA's recently effectie "bad faith" statute, 42 Pa.C.S. 8371. (jh) [Entry date 11/27/90]

11/28/90 12 MEMORANDUM - of Ct. (gg) [Entry date 12/04/90]

11/28/90 13 ORDER by Judge Sylvia H. Rambo granting pltf's motion to amend their complaint [8-1] the motion of Hartford Insurance Group and The Provident Life & Acciddent Ins. Co. to dismiss the complt in its entirety are moot. [4-1]; [3-1]. The motion of The Provident Life & Accident Insurance Company to strike pltfs' claim in the original complt. for delay damages is deemed moot. [3-2] The motion of The Provi-

dent Life & Accident Insurance Company to dismiss Count II of pltfs' amended complt. on the basis of preemption is granted. The Motion of The Provident Life & Accident Insurance Company to strike the demand for a jury trial on Count I is granted. Scheduling conf. will be conducted 8:45 on 12/20/90 (cc: Anginto, Miller, Boyunton, Rubendall, Lewis & Ct. (gg) [Entry date 12/04/90]

12/4/90 14 AMENDED complaint [1-2]; adding National Medical Enterprises Inc., National Medical Specialty Hospital Group, Psychiatric Institute of America Health Care Group and PA Health Corp. with exhibits attached and c of s; answers due 12/17/90 (Summons #2 issued with N/C) (jh) [Entry date 12/10/90]

12/10/90 15 LETTER - to court from plaintiff Nancy M. Smith, plaintiff Joseph L. Smith: sched. conf. will be conducted by phone w/office of Atty Angino initiating call. cc:Rubendall, Miller. (pr) [Entry date 12/12/90]

12/17/90 16 ANSWER by defendant Provident Life and Accident Ins. Co. to Pltfs' amended complt. (gg) [Entry date 12/19/90]

12/19/90 17 MOTION by defendant National Medical, defendant National Medical Spe, defendant Psychiatric Institut, defendant PA Health Corp. to extend time to respond to amended complt. with cert. of conc and C of S. (gg) [Entry date 12/27/90]

12/20/90 19 MINUTE SHEET of C/M/C held on 12/20/90 at 8¾45 a.m. (jh) [Entry date 01/02/91]

12/21/90 18 MOTION by defendant Hartford Insurance. to dismiss the amended complt. with cert. of conc and non/conc. and C of S. (gg) [Entry date 12/26/90]

12/21/90 20 ORDER by Judge Sylvia H. Rambo Jury selection will held at 9:30 a.m. on 1/6/92; Jury trial will be held at 9:30 a.m. on 1/7/92; discovery shall be completed 9/30/91; Pretrial conference will be held at 9:00 a.m. on 1/3/92; pretrial memorandum shall be filed on or before 12/27/91 Dispositive mtns and supporting briefs must be filed by 10/31/91. Mtns in limine and supporting briefs shall be filed no later than 12/23/91. (cc: Rubendall, Miller, Boynton, Angino, Turner, Cline & Ct. w/P/T memo) (jh) [Entry date 01/02/91] [Edit date 01/23/91]

12/21/90 21 ORDER - by Judge Sylvia H. Rambo. AND NOW, this 21st day of Dec., 1990, the mtn. of defts. National Medical Enterprises, Inc., National Medical Specialty Hospital Group, Psychiatric Institutes of America Health Care Corp. d/b/a The Rehab Hospital in Mechcnicsburg, for enlarge. of time to respond to the amended complt. is granted. [17-1] The moving defts. shall respond to the amended complaint on or before 1/21/91 (cc: Angino, Miller, Boynton, Rubendall, Lewis & Crt.) (am) [Entry date 01/02/91]

1/7/91 22 BRIEF by defendant Hartford Insurance. in support of motion to dismiss the amended complt. [18-1] & C of S. (gg) [Entry date 01/08/91]

1/10/91 23 RETURN OF SERVICE executed upon defendant National Medical, Enterprises, Inc. 2700 Colorado Av. P.O. BOX 1070 Santa Monica, CA 90411-4070 on Dec. 12, 1990; defendant National Medical Spe, at 1010 Wisconsin Av. N.W. Suite 900, Washington C. 20007; defendant Psychiatric Institution, at 1010 Washington Av. N.W. Washington, D.C. 20007; & defendant PA Health Corp. c/o C. T. Corporate Systems, at 1635 Market St., Philadelphia, Pa. 19103; all by cert. mail on 12/7/90 (gg) [Entry date 01/16/91]

1/18/91 24 MOTION by defendant National Medical Enterprises, Inc. to dismiss with cert of nonconc and c of s. (jh) [Entry date 01/23/91]

1/18/91 25 CERTIFICATE by defendants National Medical Enterprises, Inc. National Medical Specialty Hospital Group, Psychiatric Institute of America, Inc. and PA Health Corp. of non-opposition to The Hartford Insurance Group's mtn to dismiss and c of s. (jh) (Entry date 01/23/91]

1/18/91 26 CERTIFICATE by defendant Provident Life and Accident Insurance Company of non-opposition to The Hartford Insurance Group's mtn to dismiss and c of s. (jh) [Entry date 01/23/91]

1/18/91 27 ANSWER by defendants National Medical Specialty Hospital Group, Psychiatric Institute of America, Inc. and PA Health Corp. to amended complaint with exhibits attached and c of s. (jh) [Entry date 01/23/91]

1/23/91 28 BRIEF by plaintiff Nancy M. Smith, plaintiff Joseph L. Smith in opposition to motion of deft. The Hartford Ins. Group to dismiss Pltf's amended complt. [18-1]; reply brief due 2/5/91 & C of S. (gg) [Entry date 01/31/91]

2/4/91 29 SUPPLEMENTAL CERTIFICATE by defendant National Medical Enterprises, Inc. of concurrence for mtn to dismiss [24-1] and c of s. (jh) [Entry date 02/07/91]

2/6/91 30 REPLY BRIEF - by defendant Hartford Insurance in support of motion to dismiss the amended complt. (c/s) [18-1] (am) [Entry date 02/07/91]

2/28/91 31 ORDER by Judge Sylvia H. Rambo terminating party National Medical from this action. (cc: Angino, Miller, Boynton, Rubendall, Lewis, Turner, Cline and Court. (gg) [Entry date 03/04/91]

3/11/91 32 MEMORANDUM by Judge Rambo re: Mtn of deft The Hartford Insurance Group to dismiss the pltf's amended complaint on the grounds that Hartford is an improper party to the action. (cc: Angino, Miller, Boynton, Rubendall, Lewis, Turner, Cline, All Judges & Ct.) (jh) [Entry date 03/18/91]

3/11/91 33 ORDER by Judge Sylvia H. Rambo: IT IS HEREBY ORDERED THAT the mtn of deft Harford Insurance Group to dismiss the amended complaint is denied. [18-1] (cc: Angino, Miller, Boynton, Rubendall, Lewis, Turner, Cline, All Judges & Ct.) (jh) [Entry date 03/18/91]

3/21/91 34 MOTION by defendant Hartford Insurance Group for reconsideration of order dated 3/11/91 [33-1] with cert of conc and non-conc and c of s. (jh) [Entry date 03/26/91]

3/25/91 35 BRIEF by defendant Hartford Insurance Group in support of motion for reconsideration of order dated 3/11/91 [33-1] [34-1] with exhibits attached and c of s. (jh) [Entry date 03/26/91]

4/5/91 36 BRIEF by plaintiff Nancy M. Smith, plaintiff Joseph L. Smith in opposition to motion for reconsideration of order dated 3/11/91 [33-1] [34-1]; reply brief due 4/18/91 & C of S. (gg) [Entry date 04/11/91]

4/22/91 37 REPLY BRIEF by defendant Hartford Insurance Group in support of motion for reconsideration of order dated 3/11/91 [33-1] [34-1] and c of s. (jh) [Entry date 04/23/91]

5/31/91 38 MEMORANDUM -of Judge Sylvia H. Rambo: re: motion for reconsideration of order dated 3/11/91 [33-1] [34-1] . . . Hartford's presence as a deft. is necessary to protect pltfs' ability to recover, should the merits of the cases indicate that recovery is warranted. See memo for details. (cc: Ct;

Angino; Miller; Boynton; Rubendall; Lewis; Turner; Cline & all MD of PA Judges) (js) [Entry date 06/11/91]

5/31/91 39 ORDER -by Judge Sylvia H. Rambo: denying Hartford Insurance's motion for reconsideration of order dated 3/11/91 [33-1] [34-1] (cc: Ct; all MD of PA Judges; Angino; Miller; Rubendall; Lewis; Turner & Cline) (js) [Entry date 06/11/91]

7/18/91 40 MOTION by deft. Provident Life to extend time to 7/29/91 in which to answer pltf's 1st set of interrog. & req. for production. Conc. of pltf. noted. Prop. Ord. attached. (c of s) (js) [Entry date 07/30/91]

7/19/91 41 ORDER -by Judge Sylvia H. Rambo: granting deft. Provident Life's motion to extend time to 7/29/91 in which to answer pltf's 1st set of interrog. & req. for production [40-1] (cc: Ct.; Angino; Miller; Boynton; Rubendall; Lewis; Turner; Cline) (js) [Entry date 07/30/91]

8/23/91 42 MOTION by pltfs. for leave to file 2nd amended complaint adding P.I.A. Voluntary Employees Benef. Assn. Adminis. Committee & P.I.A. Voluntary Employees Beneficiary Assn. Group Insur. Plan as defts. Conc. by Deft. Provident Life & Accident. No indication of preference as to Hartford Insur., NME Specialty Hosp. Group, Psychiatric Institutes of Am., PA Health Corp d/b/a Rehab Hosp. of Mech. Prop. 2nd Amended Complaint attached as Ex. "A". (c of s) Prop. Ord. (js)

9/4/91 43 BRIEF by plaintiffs Nancy M. Smith and Joseph L. Smith in support of motion for leave to file 2nd amended complaint adding P.I.A. Voluntary Employees Benef. Assn. Adminis. Committee & P.I.A. Voluntary Employees Beneficiary Assn. Group Insur. Plan as defts. [42-1] and c of s. (jh) [Entry date 09/10/91]

9/4/91 44 CERTIFICATE (STATEMENT OF NON-OPPOSITION) by David S. Wisnoski, Esquire o/b/o plaintiff Nancy M. Smith and Joseph L. Smith stating that he contacted all defense cnsl. in order to seek their concurrence in pltfs' mtn for leave to file a 2nd amended complaint. Deft Provident Life and Accident Ins. Co. concurs in the mtn. While the remaining defts do not concur in the mtn, they do not oppose it, and have stated that they do not intend to file briefs in opp. to pltfs' mtn for leave to file a 2nd amended complaint. (jh) [Entry date 09/10/91]

9/6/91 45 MEMORANDUM AND ORDER by Judge Sylvia H. Rambo IT IS HEREBY ORDERED THAT pltfs' request to file a 2nd amended complaint adding 2 additional defts is granted. [42-1] Pltfs shall file an orig. copy of their 2nd amended complaint with the clerk of court no later than 9/13/91. (cc: Angino, Wisneski, Miller, Boynton, Rubendall, Lewis, Turner, Cline & Ct.) (jh) [Entry date 09/10/91]

9/10/91 46 2ND AMENDED COMPLAINT [14-1] no jury demanded; adding defts PIA Emp Insur Plan and PIA Emp Bnft Admin; Summons issued & handed to atty to effect svc. upon addtl. defts. (c of s) (js) [Entry date 09/13/91] [Edit date 09/25/91]

9/20/91 47 MOTION by pltfs. to extend discov. ddl for 60 days and to reset sched. conf. Conc. of defts. noted. (c of s) Prop. Ord. attached. (js) [Entry date 09/23/91]

9/25/91 48 ANSWER by defendant Provident Life and Accident Insurance Co. to pltfs' second amended complaint and c of s. (jh) [Entry date 09/26/91]

9/26/91 49 ORDER -by Judge Sylvia H. Rambo: 1) J/Sel will be held at 9:30 a.m. on 3/2/92-March '92 trial term begins 3/3/92; 2) Discov. ddl. extended to 11/29/91; 3) PTC reset for 3:30 pm. on 2/28/92; 4) P/T Memos due on 2/21/92; 5) Dispos. mtn ddl. set for 12/31/91; 6) In Lim. Mtns. due 2/14/92 (cc: all counsel; Ct.; V. Fox; Lois; TJM) (js) [Entry date 09/27/91]

9/30/91 50 ANSWER TO 2ND AMEND COMPLAINT -by defts. Nat'l. Medical Specialty Hosp. Group, Psychiatric Institut, PA Health Corp., PIA Emp Insur Plan, PIA Emp Bnft Admin. (c of s) (js) [Entry date 10/01/91]

10/3/91 51 ANSWER by defendant Hartford Insurance Group to amended complaint and c of s. (jh) [Entry date 10/07/91]

10/11/91 52 MOTION by pltfs. to reset trial date until after 3/10/92. Conc. of defts. noted. (c of

s) Prop. Ord. attached. (js) [Entry date 10/16/91]

10/15/91 53 ORDER -by Judge Sylvia H. Rambo: 1) granting pltf's mtn to reset trial date. [52-1]; 2) J/Sel reset for 9:30 a.m. on 4/6/92 A date certain for trl. will be discussed at the PTC;term prev. ddls.; 3) PTC resched. to be held at 1:30 pm. on 4/2/92; 4) P/T Memos due on 3/26/92. (cc: Ct; all counsel; Ct. Rptr; Lois & TJM) (js) [Entry date 10/16/91]

11/5/91 54 RETURN OF SERVICE FOR 2ND AMENDED CMP. executed upon all defts. by regular mail accepted by asstd. parties on 9/10/91. (js)

11/5/91 55 CERTIFICATE OF SERVICE by pltf. for mtn. to extend disc. ddl. & mtn. for new sched. conf. sent on 09/20/91. (js)

12/12/91 56 STIPULATION OF PARTIAL DISMISSAL - between cnsl. pursuant to FRCP 41(a)(1), that all claims against deft The Hartford Insurance Group are w/drawn and The Hartford Insurance Group is dismissed w/out prejudice as a party to this action. (jh) [Entry date 12/13/91]

12/12/91 57 STIPULATION - between cnsl. that 1) deft The Provident Life and Accident Insurance Co. shall be dismissed from the case w/out prejudice; 2) Pltfs and Provident shall each bear their own costs; 3) This stip shall not impair any rights Provident may have to obtain reimbursement of court costs, attorney's fees and other reasonable

expenses incurred by Provident in connection with this lawsuit pursuant to Article IV of the Administrative Services Agreement No. W-480-ASO between Provident and defts Psychiatric Institutes of America and National Medical Specialty Hospital Group; and 4) This stip may be executed in counterparts. (jh) [Entry date 12/13/91]

12/18/91 58 MOTION by defts. Natl. Medical Spec. Psych. Institute, PA Health Corp., PIA Emp Insur Plan, PIA Emp Bnft Admin to extend time to file dispos. mtns. Conc. of pltf. noted. (c of s) Prop. Ord. attached. (js) [Entry date 12/26/91]

12/19/91 59 ORDER -by Judge Sylvia H. Rambo: granting defts' mtn. to extend time to file dispos. mtns. [58-1] ddl. extended to 1/31/92 (cc: Ct; all counsel) (js) [Entry date 12/26/91]

1/31/92 60 MOTION by all defts. for sum/jgm., Exhibits, statmt. of facts, Non-Conc of pltfs., Prop. Ord. & c of s attached. (js) [Entry date 02/06/92]

1/31/92 61 BRIEF/SUPPORT -by all defts. to their mtn. for sum/jgm. [60-1] (js) [Entry date 02/06/92]

1/31/92 62 AFFIDAVIT of James F. Doherty, Jr. in support of defts' mtn. for sum/jgm. [60-1] (js) [Entry date 02/06/92]

1/31/92 63 EXHIBITS (APPENDIX) -of defts. in support of their mtn. for sum/jgm. (js) [Entry date 02/06/92]

1/31/92 60 STATEMENT OF FACTS - by defendants National Medical Spe, Psychiatric Institutes, PA Health Corp., PIA Emp Insur Plan, PIA Emp Bnft Admin. in support of motion for sum/jgm. [60-1] (am) [Entry date 02/24/92]

2/3/92 64 LETTER - from Richard C. Angino, Esquire to court dated 1/27/92 re: substitution of David S. Wisneski, Esquire for P/T/C. (jh) [Entry date 02/11/92]

2/7/92 65 ORDER by Judge Sylvia H. Rambo The court is in receipt of a letter from cnsl. for pltf requesting approval of the substitution for him of one of cnsl's associates for purposes of the P/T/C only. IT IS HEREBY ORDERED THAT the substitution is approved provided substitute cnsl is fully familiar with the case, comes to the conference fully prepared with necessary info regarding exhibits and witnesses for trial, and has the required settlement authority. (cc: all counsel & Ct.) (jh) [Entry date 02/11/92]

2/18/92 66 BRIEF - by plaintiffs Nancy M. Smith & Joseph L. Smith in opposition to motion for sum/jgm. [60-1]; reply brief due 3/2/92. (c/s) (am) [Entry date 02/24/92]

2/18/92 67 SUPPLEMENT (VOL. I) - by plaintiffs Nancy M. Smith & Joseph L. Smith in support of brief in opp. to defts.' mtn. for SJ. [66-1] (am) [Entry date 02/24/92]

2/18/92 68 SUPPLEMENT (VOL. II) - by plaintiffs Nancy M. Smith & Joseph L. Smith in

support of brief in opp. to defts' mtn for SJ. [66-1] (am) [Entry date 02/24/92]

2/18/92 69 RESPONSE - by plaintiffs Nancy M. Smith & Joseph L. Smith to defts.' statement of material facts. (c/s) (am) [Entry date 02/24/92]

3/3/92 70 Reply brief by defendants in support of motion for sum/jgm. [60-1] w/ c of s. (cl) [Entry date 03/05/92]

3/18/92 71 ORDER by Judge Sylvia H. Rambo Case added to May trial list. Trials for cases on list will comence at 9:30 a.m. on 5/5/92; Pretrial conference sched for 9:00 a.m. 5/1/92; Pretrial memoranda shall be filed on or before 4/24/92; motion filing ddl set 4/17/92 (cc: all counsel) (cg) [Entry date 03/31/92]

4/16/92 72 MEMORANDUM - of J. Rambo re: granting defts.' motion for sum/jgm. cc: All Counsel, Security & Crt. [60-1] (am) [Entry date 04/21/92]

4/16/92 73 ORDER AND JUDGMENT - by Judge Sylvia H. Rambo: IT IS HEREBY ORDERED THAT: 1. Defts. NME Specialty Hospital Group and Psychiatric Institutes of America, Inc. are dism'd by agreement between the parties. 2. The mtn. of defts. Rehab Hospital, P.I.A. Voluntary Employees Beneficiary Assn. Group Ins. Plan, and P.I.A. Voluntary Employees Beneficiary Assn. Administrative Committee for SJ is granted. 3. Judgment is hereby entered in favor of defts. and against plfs. 4. The

Clerk of Crt. is directed to close the file. [60-1] terminating party National Medical Specialty Hospital Group Case terminated (cc: all counsel, Crt. & Security) (am) [Entry date 04/21/92]

4/21/92 – REMARK: Docs. Nos. 1 thru 73 placed in Hbg. file room. (am)

4/29/72 74 MOTION by plaintiff for reconsideration of order [73-3]. Non-conc., c of s & Prop. Ord. attached. (js) [Entry date 05/01/92]

4/30/92 75 BRIEF/SUPPORT -by plaintiffs to their motion for reconsideration of order [73-3] – [74-1]. (c/s) (js) [Entry date 05/01/92]

5/11/92 76 NOTICE OF APPEAL -by pltfs. from District Court Order/Judgment filed 4/16/92. [73-3] (Filing fee paid, TPO handed to attorney, certified copies of notice of appeal, jgm/order being appealed, docket entries and info/ack letter to USCA. (cc: File, all counsel, C/R and Judge Rambo) Receipt No. & Amt: 110498/$105.00 (js) [Entry date 05/12/92]

5/12/92 – REMARK- case file in Harrisburg Active File Room. (js)

5/15/92 78 Brief by defendant in opposition to motion for reconsideration of order] 73-3] [74-1] w/ c of s. ;reply brief due 5/28/92 (c1) [Entry date 05/26/92]

5/19/92 77 TRANSCRIPT PURCHASE ORDER - stating that a transcript is not necessary for appeal. (jh)

5/19/92 — REMARK - RECORD COMPLETE FOR PURPOSES OF APPEAL. (jh)

5/19/92 — CERTIFIED COPY of docket entries to be filed as the certified list in lieu of the record. (jh)

5/26/92 79 ACKNOWLEDGEMENT RECEIVED- from USCA for the certified copy of docket entries in lieu of the record in Appeal #92-7242 dated 5/21/92 by MMB. (js) [Entry date 05/28/92]

5/28/92 — REMARK- docu. #79 sent to case file in Harrisburg Active File Room. (js)

6/1/92 80 REPLY BRIEF by plaintiffs Joseph L. Smith and Nancy M. Smith in support of motion for reconsideration of order [73-3] [74-1] and c of s. (jh) [Entry date 06/05/92]

6/2/92 81 MEMORANDUM AND ORDER by Judge Sylvia H. Rambo denying pltfs' motion for reconsideration of order [73-3] [74-1] (cc: all counsel, Judges & Ct.) (jh) [Entry date 06/05/92]

6/5/92 — 1ST SUPPLEMENTAL - cert. copy of docket entries in lieu of 1st supplemental record with the info/ack letter sent to USCA from Hbg. (jh)

6/8/92 — REMARK - Certified copy of document no. 81 sent to USCA. (jh)

6/15/92 82 CERTIFIED COPY of Appellate Court Order: dismissing the appeal [76-1] for lack of appellate jurisdiction (premature). The record is relased and this is certified as

a true copy of June 11, 1992. (cc: Judge Rambo) (js)

6/15/92 – REMARK- case file sent to Harrisburg Closed File Room. (js)

6/16/92 83 NOTICE OF APPEAL by plaintiffs Joseph L. Smith and Nancy M. Smith from District Court order and judgment filed 4/16/92 [73-3]]73-4] (Filing fee paid, TPO handed to attorney, certified copy of docket entries, notice of appeal, order & judgment being appealed, with info/ack letter to USCA. (cc: Not/appl with info/ack letter to all counsel & Ct.) Receipt No. & Amt: Not pd. pur. 4(a)(4) FRAP (jh)

6/16/92 – REMARK - Case file in open file room in Hbg. (jh)

6/16/92 84 ACKNOWLEDGEMENT RECEIVED- from USCA, for the certified copy of docu. #81, dated 6/10/92 by MMB. (js) [Entry date 06/18/92]

6/16/92 – REMARK- docu. #84 to case file in Harrisburg Active File Room. (js) [Entry date 06/18/92]

6/22/92 85 TRANSCRIPT PURCHASE ORDER - filed by Richard C. Angino, Esquire stating that a transcript is not necessary for purposes of appeal. (jh)

6/22/92 – REMARK - RECORD COMPLETE FOR PURPOSES OF APPEAL (jh)

6/22/92 – CERTIFIED COPY of docket entries to be filed as the certified list in lieu of record. (jh)

6/26/92 86 NOTIFICATION by Circuit Court of Appellate Docket Number 92-7310 (jh) [Entry date 07/01/92]

6/29/92 87 ACKNOWLEDGEMENT RECEIVED- from USCA of certified copy of the docket entries to be filed as the cert. list in lieu of the record. (jh) [Entry date 07/01/92]

11/12/92 – Doc. # 6 to PRSLC. (ps)

10/28/93 88 CERTIFIED COPY OF JUDGMENT/OPINION from USCA affirming in part and reversing in part and remanding the Decision of the District Court [Appeal [83-1] Certified as a true copy & issued in lieu of a formal mandate on 10/26/93. (js)

10/28/93 – REMARK- Copy of docket & 3rd Circuit Jgm. to CJ Rambo. (js)

11/30/93 89 ORDER- by Judge Sylvia H. Rambo: Scheduling conf set for 10:00 12/9/93 (cc: Ct; all counsel) (js) [Entry date 12/01/93]

12/10/93 90 MINUTE SHEET of CMC held on 12/9/93 (jh)

12/13/93 91 ORDER by Judge Sylvia H. Rambo Jury selection will be held 9:30 a.m. 10/3/94; Discovery shall be completed by 6/30/94; Pretrial conference will be held on 9/30/94 at 10:00 a.m.; pretrial memorandum shall be filed on or before 9/23/94; motion filing ddl set 7/29/94 (cc: all counsel) (cg) [Entry date 12/15/93]

2/27/94 129 ORDER- by Judge Sylvia H. Rambo: Case referred to Magistrate J. A. Smyser so that

settlement negotiations & discussions may be arranged. (cc: Ct;MJ Smyser & all counsel) (js) [Entry date 02/28/95]

5/3/94 92 CERTIFICATION TO ATTY. GENERAL OF THE U.S. pursuant to 28 USC 2403 signed by J. Rambo: AND NOW, this 3rd day of May, 1994, pur. to 28 USC 2403, the U.S.D.C. for the M.D. of PA by Chief J. Rambo hereby certifies to the Atty. General of the U.S. that the plfs. in the above-captioned action have raised a constitutional challenge to the ERISA of 1974, 29 USC 1001 et seq. (cc: All Counsel & Crt.) (am) [Entry date 05/05/94]

5/3/94 93 LETTER - dtd. 4/22/94 to court from Atty. Wisneski o/b/o plaintiffs Joseph L. Smith & Nancy M. Smith that due to the constitutionality issue raised by plfs. re: ERISA, the crt. is required to notify the Atty. General. (am) [Entry date 05/05/94]

7/25/94 94 2ND MOTION by defts. for sum/jgm. w/ exhs. & Propo. (js) [Entry date 07/26/94]

7/25/94 95 BRIEF/SUPPORT- by defts. to their 2nd mtn for sum/jgm. [94-1] (c/s) (js) [Entry date 07/26/94]

7/25/94 96 APPENDIX filed by defts. supporting the 2nd mtn for sum/jgm. [94-1] (js) [Entry date 07/26/94]

7/29/94 97 MOTION by deft PA Health Corp. to bifurcate the liability & damages portions of trial. Non-conc. (c/s) Propo. (js) [Entry date 08/01/94]

8/8/94 98 BRIEF/SUPPORT- by Deft PA Health Corp. to its mtn. to bifurcate [97-1] (c/s) (js) [Entry date 08/09/94]

8/9/94 99 Response by plaintiffs to defendants' statment of material facts as to which there is no genuine issue to be tried. (cg) [Entry date 08/10/94]

8/9/94 100 Brief by plaintiffs in opposition to dfts 2nd motion for sum/jgm. [94-1] (cg) [Entry date 08/10/94]

8/9/94 101 APPENDIX - to plts' brief in opposition to defts' 2nd mtn for s/j (cg) [Entry date 08/10/94]

8/9/94 102 CERTIFICATE of service by plaintiff showing proof of service to Andrew H. Cline of Plfs' response to defts' statement of material facts to which there is no genuine issue to be tried. (cg) [Entry date 08/10/94]

8/9/94 103 CERTIFICATE by plaintiffs showing proff of service to Andrew H. Cline of Plfs' brief in opp. to deft's 2nd motion for s/j and Appendix. (cg) [Entry date 08/10/94]

8/17/94 104 ORDER by Judge Sylvia H. Rambo that the motion for bifurcation of trial is granted and that the issued of liability and damages shall be bifurcated for trial. The Court will, if necessary, first hear testimony and take evidence on the factual issues as to which the Circuit Court remanded for further proceedings. If those issues are resolved against deft, the Court will schedule a hearing on the issues of

damages. [97-1] (cc: all counsel) (cg) [Entry date 08/18/94]

8/17/94 105 Letter to court from plaintiff's cnls advising that plfs do not oppose the motion for bifurcation filed by the defts and that plfs will ot be filing a brief in opposition to the brief filed by deft on 8/8/94. (cg) [Entry date 08/18/94]

8/26/94 106 REPLY BRIEF by defendant PA Health Corp. in support of dft's 2nd motion for sum/jgm. [94-1]; c/s (vg) [Entry date 08/29/94]

9/23/94 107 PRE-TRIAL MEMO. submitted by plaintiff with exhibit list attached & C/S. (tm)

9/23/94 108 PRETRIAL MEMORANDUM - submitted by defendant PA Health Corp. (c/s) (am) [Entry date 09/26/94]

9/27/94 109 UNOPPOSED MOTION by plaintiff for leave to file a trial brief in excess of the 15 page limit w/ c of s. (cl) [Entry date 09/28/94]

9/28/94 110 ORDER- by Judge Sylvia H. Rambo: granting pltf's mtn for leave to file a trial brief in excess of the 15 page limit (cc: Ct; all counsel) (js) [Entry date 09/29/94]

9/29/94 111 MOTION - by plfs. Joseph L. Smith & Nancy M. Smith to exclude an expert witness, Joette P. Derricks, not previously identified in disc. Cert. of non-conc. (c/s) (am) [Entry date 09/30/94]

9/29/94 112 MEMORANDUM - by plaintiffs N. Smith & J. Smith in support of motion to exclude

an expert witness, Joette P. Derricks, not previously identified in disc. [111-1] (c/s) (am) [Entry date 09/30/94]

9/29/94 113 SUPPLEMENT/EXHIBITS - of plfs. L. Smith & Nancy M. Smith in support of memorandum & mtns. re: exclusion of expert witness, Joette P. Derricks. [112-1] (c/s) (am) [Entry date 09/30/94]

9/29/94 114 MOTION - by plfs. Joseph L. Smith & Nancy M. Smith to exclude defts.'s expert witness Robert B. Edmiston, M.D. (c/s) (am) [Entry date 09/30/94]

9/29/94 115 MEMORANDUM - by plfs. Joseph L. Smith & Nancy M. Smith in support of motion to exclude defts.'s expert witness Robert B. Edmiston, M.D. [114-1] (c/s) (am) [Entry date 09/30/94]

9/29/94 116 SUPPLEMENT/EXHIBITS - of plfs. Joseph L. Smith & Nancy M. Smith in support of plfs.'s mtn. to exclude deft.'s expert witness Robert B. Edmiston, M.D. (c/s) [115-1] (am) [Entry date 09/30/94]

9/29/94 117 MOTION - by plfs. Joseph L. Smith & Nancy M. Smith to exclude docs. not previously identified in disc. Cert. of non-conc. (c/s) (am) [Entry date 09/30/94]

9/29/94 118 MEMORANDUM - by plfs. Joseph L. Smith & Nancy M. Smith in support of motion to exclude docs. not previously identified in disc. [117-1] (c/s (am) [Entry date 09/30/94]

9/26/94 119 SUPPLEMENT/EXHIBITS - by plfs. Joseph L. Smith & Nancy M. Smith in support of plfs.' mtn. to exclude docs. not previously identified in disc. [118-1] (c/s) (am) [Entry date 09/30/94]

9/30/94 120 Minute Sheet of pretrial conference held 9/30/94 in chambers CTR: None Present (cg) [Entry date 10/03/94]

9/30/94 121 ORDER-by Judge Sylvia H. Rambo that in light of the court's prior order bifurcating trial as to liability and damages, the court will stay consideration of the deft's 2nd motion for s/j, which addresses the relief available in the event of liability, pending issuance of a ruling on the liability issues to be decided pursuant to the mandate of the 3rd Circuit Court of Appeals; and with respect to the liability issues, the court will make finding of fact and conclusion of law based upon the record now before the court; and should the court determine that oral argument will be beneficial to its determination of the liability issues, it will notify the parties and schedule argument accordingly. (cc: all counsel) (cg) [Entry date 10/03/94]

9/30/94 122 Trial brief submitted by plaintiff. (cg) [Entry date 10/03/94]

9/30/94 123 Supplemental proposed findings of fact and conclusions of law submitted by plfs'. [107-1] (cg) [Entry date 10/03/94]

10/7/94 124 MOTION by defendant PA Health Corp. to extend time to respond to pltfs' mtns.

to exclude evidence - to commence upon issuance of Court's ruling on liability issues; Cert. of Conc.; C/S. (vg) [Entry date 10/11/94]

10/11/94 125 ORDER- by Judge Sylvia H. Rambo: granting deft's mtn to extend time to respond to pltfs' mtns. to exclude evidence - to commence upon issuance of Court's ruling on liability [124-1] term previous ddl. for br/oppo (cc: Ct; all cnsl) (js) [Entry date 10/12/94]

2/16/95 126 MEMO AND ORDER: by Judge Sylvia H. Rambo- 1) Judgment is granted in favor of pltfs. on the liability aspects of their equitable estoppel and breach of fiduciary claims against deft. PA Health Corp. d/b/a the Rehab. Hospital of Mechanicsburg; 2) The Clerk is directed to defer the entry of the judgment until the conclusion of this case; 3) A separate order will be issued in the future on the amt. pltfs. may recover. (cc: Ct; all counsel) (js) [Entry date 02/17/95]

2/16/95 127 MEMO AND ORDER: by Judge Sylvia H. Rambo- 1) denying mtns to exclude (in limine) [117-1] [114-1] [111-1] and 2) denying deft's mtn for sum/jgm. [94-1]; 3) In chambers conf. will be held re: next phase of these proceedings at 10:00 a.m. on 2/24/95 (cc: Ct; Ct. Rptr; Ctrm. Deputy & all counsel) (js) [Entry date 02/17/95]

2/24/95 128 MINUTE SHEET of case mgmt. conf. held on 2/24/95 by Judge Sylvia H. Rambo. CTR: None (js) [Emtry date 02/27/95]

2/28/95 — REMARK- Case file & copy of docket to MJ Smyser. (js)

3/2/95 130 ORDER by Judge J. Andrew SmyserA Settlement conference will be held at 9:00 a.m. on 3/13/95 in room 1160, 11th floor, federal bldg. (cc: all counsel & Ct.) (tm)

3/3/95 131 MOTION by PA Health Corp. to extend time in which to file a motion with cert of concon and C of S (ls) [Entry date 03/06/95]

3/6/95 — Remark doc 131 to Smyser (ls)

3/8/95 132 ORDER by Judge Sylvia H. Rambo granting dft's motion to extend time in which to file a Rule 59 motion [131-1] (cc: all counsel & Ct.) (tm)

3/9/95 133 ORDER- by Magistrate J. A. Smyser: Settlement conf. rescheduled to be held 2:00 3/15/95 (cc: MJ Smyser; all counsel) (js)

3/16/95 134 MINUTE SHEET of settlement conf. held on 3/16/95 Settlement discussions. Another conference scheduled for 3/28/95 at 3:00 p.m. (jh) [Entry date 03/17/95]

3/16/95 135 ORDER by Magistrate J. A. Smyser A settlement conference is scheduled at 3:00 p.m. on 3/28/95 (cc: all counsel, Ct. Dpty. & Ct.) (jh) [Entry date 03/17/95]

3/29/95 136 MINUTE SHEET from settlement conf. held before MJ Smyser on 3/28/95. No settlement possible. CTR: None (js) [Entry date 03/30/95]

5/9/95 137 NOTICE - scheduling oral argument for 5/19/95 at 4:00 p.m. cc: Cline, Turner, Angino & Ct. (tm) [Entry date 05/10/95]

5/19/95 138 MOTION - by defendant PA Health Corp. for reconsideration of order dtd. 2/16/95 [126-1] (c/s) (am)

5/19/95 139 MINUTE SHEET - of oral argument. CTR: V. Fox (am) [Entry date 05/23/95]

6/5/95 140 Brief by PA Health Corp. in support of motion for reconsideration of order dtd. 2/16/95 [126-1] [138-1] C/S (cm) [Entry date 06/06/95]

6/21/95 141 BRIEF by plaintiff Joseph L. Smith, plaintiff Nancy M. Smith in opposition to dfts' motion for reconsideration of order dtd. 2/16/95 [126-1] [138-1], w/ c of s. ; reply brief due 7/5/95 (cl) (Entry date 06/22/95]

7/6/95 142 REPLY BRIEF by defendant PA Health Corp. in support of motion for reconsideration of order dtd. 2/16/95 [126-1] [138-1]; C/S. (vg) [Entry date 07/07/95]

9/5/95 143 MEMORANDUM AND ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT 1) Pltfs are entitled to reimbursement for past skilled nursing care and other medical and rehabilitative expenses, and coverage for future skilled nursing care an other medical and rehabilitative expenses, up to the amount of the individual Blue Cross/ Blue Shield policy that Nancy Smith could have converted to rather than enrolling in deft's new VEBA plan; 2) The total amount

of past and future reimbursement shall be reduced by all amounts paid by the VEBA plan for Nancy Smith's skilled nursing and other medical and rehabilitative care; 3) Pltfs are entitled to an award of attorneys' fees and expenses; 4) deft's mtn for reconsideration is granted, with the understanding that the court will make the final factual determinations referenced in deft's mtn for reconsideration when it makes the factual findings necessary to awarding the ultimate relief in this matter; and [138-1] [126-1] 4) The court will conduct a conf. on 9/8/95 at 8:30 a.m. in the chambers of Courtroom No. 3 to discuss the procedure to be utilized in making all factual determinations necessary to the relief to be awarded in accordance with this memorandum, and to discuss the timing for submission of a petition for attorneys' fees. (cc: all counsel, Ct. & Judges) (jh) [Entry date 09/06/95]

9/8/95 144 MINUTE SHEET from case mgt. conf. held 09/08/95 CTR: None (js)

9/20/95 145 ORDER- by Judge Sylvia H. Rambo: Status report due on good-faith attempt to stip. to BC/BS policy & coverage available is due 11/15/95 (cc: Ct; all counsel) (js) [Entry date 09/21/95]

10/10/95 146 Affidavit of Richard C. Angino, Esquire. C/S (cm) [Entry date 10/11/95]

10/31/95 147 EXPERTS' REPORTS filed by cnsl. for dft., Pennsylvania Health Corp.; C/S (vg) [Entry date 11/01/95]

11/15/95 148 Written joint status report pursuant to the court's order of 9/20/1995. (cm) [Entry date 11/01/95]

11/22/95 149 ORDER - by Judge Sylvia H. Rambo: A one day NJ trial on the issue of the reimbursement due, and the amt. and extent of coverage remaining pur. to the Blue Cross/ Blue Shield Major Medical Policy . . . will be held on 2/1/96 at 9:30 a.m. in Crtrm. #3, 8th Flr., Fed. Bldg., Hbg., PA. 2. Pretrial memorandum shall be filed no later than 1/25/96. (cc: all counsel, Crt., Crt. Rptr., Crtrm. Deputy) (am) [Entry date 11/24/95]

1/3/96 150 NOTICE - sched. NJ Trial for 1/17/96 at 11 a.m. in Crtrm. No. 3, Hbg., PA. cc: All counsel, Crt. & Crt. Rptr. (am)

1/4/96 151 ORDER by Judge Sylvia H. Rambo: The deadline for filing pretrial memo. is moved to 1/11/96. (cc: all counsel) (tm)

1/12/96 152 FINDINGS OF FACT and conclusions of law filed by plntf. C/S. (tm) [Entry date 01/18/96]

1/12/96 153 PRE-TRIAL MEMO. submitted by plaintiffs w/exhibit list attached. C/S. (tm) [Entry date 01/18/96]

1/12/96 154 FINDINGS OF FACT and conclusions of law submitted by dfts. C/S. (tm) [Entry date 01/18/96]

1/12/96 155 PRE-TRIAL MEMO. submitted by defendants w/exhibit list attached. C/S. (tm) [Entry date 01/18/96]

1/17/96 156 TRIAL BRIEF on damages submitted by defendant. C/S. (tm) [Entry date 01/18/96]

1/17/96 157 Minute Sheet of non-jury trial on 1/17/96 Court takes matters under advisement CTR: V. Fox (jw) [Entry date 01/19/96]

1/16/96 158 Exhibit list of defendants exhibits. (Exhibits w/Ct) (jw) [Entry date 01/19/96]

1/17/96 159 Exhibit list of plaintiffs exhibits (Exhibits w/Ct) (jw) [Entry date 01/19/96]

2/26/96 160 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT 1) On or before 3/8/96, pltfs shall file with the court a report detailing the following: a) the medical services actually received by Nancy Smith from 12/6/86 when Nancy's husbasnd chose to enroll her in the VEBA plan until her discharge from Seidle in March of 1994; b) the dates during which she received those services; c) the charge for the services provided; and d) if payment was made for the services, how much was paid and by whom; 2) Pltfs' report shall organize the info listed above in amanner that will permit the court at a glance to observe how much a particular medical service actually rendered cost, whether it was paid for and by whom it was paid; and 3) On or before 3/15/96, deft shall file with the court a response to pltf's supplement to the record. (cc: all counsel & Ct.) (jh) [Entry date 02/27/96]

3/7/96 161 SUPPLEMENTAL TRIAL SUBMISSION of plaintiffs pursuant to the Court's order of 2/26/1996. [160-1] (cm) [Entry date 03/11/96]

3/15/96 162 RESPONSE by defendants to plntfs. report. (tm) [Entry date 03/18/96]

3/19/96 163 TRANSCRIPT of non jury trial held 1/17/96. CTR: V. Fox (tm)

4/26/96 164 FINDINGS OF FACT AND CONCLUSIONS OF LAW by Judge Sylvia H. Rambo (cc: all counsel, all Judges & Ct. (3)) (jh) [Entry date 04/29/96]

4/26/96 164 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT 1) Under the terms of the BC/BS policy to which Nancy Smith could have converted at the time that she elected to enroll in the VEBA plan. Pltfs are not entitled to any reimbursement for services provided to Nancy Smith from Sept. 1986 through March 1994; and 2) The clerk of court is directed to enter judgment in favor of deft PA Health Corp., d/b/a The Rehab Hospital of Mechanicsburg, and against pltfs and close the file. (cc: all counsel, all Judges & Ct. (3)) (jh) [Entry date 04/29/96]

4/26/96 165 JUDGMENT by Judge Sylvia H. Rambo IT IS ORDERED that judgment be and is hereby entered in favor of Defendant Pennsylvania Health Corp., d/b/a The Rehab Hospital of Mechanicsburg and against plaintiffs, Nancy M. Smith and Joseph L. Smith, her husband. Case ter-

minated (cc: all counsel, all Judges & Ct. (3)) (jh) [Entry date 04/29/96]

4/29/96 – REMARK - Case file consisting of documents 1 through 165 placed in closed file room in Hbg. (jh)